Supreme Court of the United States

October Term, 1956

No. [redacted] 189

MILTON KNAPP,

Appellant,

against

MITCHELL D. SCHWEITZER, Judge of the Court of General Sessions and FRANK S. HOGAN, District Attorney of the County of New York,

Appellees.

MOTION TO DISMISS OR AFFIRM

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No. 1085

MILTON KNAPP,

Appellant,

against

MITCHELL D. SCHWEITZER, Judge of the Court of General Sessions and FRANK S. HOGAN, District Attorney of the County of New York,

Appellees.

MOTION TO DISMISS OR AFFIRM

May It Please the Court:

Now come the appellees in the above entitled cause and move the appeal be dismissed, or, in the alternative, that the final judgment appealed from be affirmed.

Statement

This is an appeal from a final order of the New York Court of Appeals unanimously affirming, without opinion, an order of the Appellate Division of the Supreme Court, First Department, which affirmed, with opinion, per

BERGAN, J. [2 App. Div. (2d) 579], an order of a Special Term of the Supreme Court of New York County (MARKOWITZ, J.) entered July 3, 1956, which denied and dismissed the petition of the appellant under Article 78 of the New York Civil Practice Act to review a judgment of the Court of General Sessions, New York County (SCHWEITZER, J.) rendered May 22, 1956, adjudging him in Contempt of Court (Judiciary Law, §§750, 751) and sentencing him to thirty days imprisonment in the civil jail and to pay a fine of two hundred and fifty dollars.

The Facts

On April 23, 1956, Milton Knapp, the appellant herein, was called as a witness before the April 1956 New York County Grand Jury, which was then investigating possible violations of Sections 380, 580, and 850 of the New York Penal Law (Bribery of Labor Representatives, Conspiracy and Extortion respectively). Under the provisions of Section 2447 of the Penal Law, he was granted complete immunity from prosecution concerning any crimes about which he might testify, following his refusal to answer certain questions on the grounds that the answers might tend to incriminate him. On April 25, he returned and again refused to answer questions dealing with his relationship, as an employer, with a certain named union official, and certain financial transactions between them. He persisted in his refusal, although directed to answer by the foreman, reminded of the immunity conferred upon him, advised of his possible liability for contempt, and given an opportunity to confer with his lawyer outside the jury room. The appellant was then directed to appear before the Court of General Sessions, New York County, where Honorable MITCHELL D. SCHWEITZER, an appellee

herein, after being advised as to the occurrences in the Grand Jury, ruled the questions proper and directed the appellant to answer them. When, on his next appearance before the Grand Jury, the appellant again declined on the same grounds, he was again brought before Judge SCHWEITZER in General Sessions. After one adjournment, on April 30, the District Attorney requested that the appellant be adjudged in Contempt of Court. After oral argument, the submission of briefs by both sides, and several adjournments, the appellant expressed his continuing refusal to comply with the direct order of the court to answer, and, on May 22, 1956, he was adjudged in Contempt of Court and sentenced to serve 30 days in jail and to pay a fine of two hundred and fifty dollars. (See Jurisd. Statement, Appendix A, pp. 23-33, opinion per SCHWEITZER, J.)

Thereupon, on May 23, 1956, the appellant petitioned the New York Supreme Court pursuant to Article 78 of the New York Civil Practice Act to review the contempt adjudication and to restrain the appellees herein from taking any action on the matter. He asserted, among other grounds for his petition, a lack of jurisdiction of the Court of General Sessions by virtue of alleged federal preemption of the field dealing with bribery of labor representatives, and inadequacy of the immunity granted to protect him from possible federal prosecution under the Taft-Hartley law. Other grounds, no longer at issue, were also asserted.

After hearing oral argument, and considering briefs, papers and memoranda submitted, the Supreme Court (MARKOWITZ, J.) dismissed and denied the appellant's petition in all respects (see Jurisd. Statement, Appendix A, p. 34).

The Appellate Division unanimously affirmed the denial and dismissal of the petition under Article 78 of the Civil Practice Act. Its opinion, by BERGAN, J. [2 A. D. (2d) 579; see Jurisd. Statement, Appendix A, pp. 35-43], discussed only the question of the sufficiency of the immunity. In holding the immunity granted by the grand jury sufficient, the court, assuming the fact of cooperation between the federal and state prosecuting attorneys, found that the federal courts would, in such a case, afford the appellant adequate safeguards against a federal prosecution based upon the testimony compelled by the state.

The New York Court of Appeals affirmed unanimously, without opinion [2 N. Y. (2d) 913], later amending its remittitur to state that the two federal questions here involved had been presented and passed upon [2 N. Y. (2d) 975; see Jurisd. Statement, Appendix A, pp. 43-44].

I

There is no substantial question presented.

A. Concerning the appellant's claim that the immunity granted him was insufficient

The immunity granted the appellant by the New York County Grand Jury (Penal Law §2447) was the maximum which could be granted by the State of New York. Such immunity has been held to be sufficient to displace the privilege against self-incrimination [N. Y. Const., Art. I, §6; *People* v. *Breslin* (1954) 306 N. Y. 294].

The grand jury was not required, nor could it, grant the appellant immunity from federal prosecution. The federal and New York decisions are in complete accord on the proposition that all that is necessary, to remove from a

witness the privilege against self-incrimination, is a grant of full immunity within the particular jurisdiction questioning him [*Jack* v. *Kansas* (1905) 199 U. S. 372; *Hale* v. *Henkel* (1906) 201 U. S. 43, 68-69; *United States* v. *Murdock* (1931) 284 U. S. 141, 149, (1933) 290 U. S. 389, 396; *Feldman* v. *United States* (1944) 322 U. S. 487, 490-494; *United States* v. *St. Pierre* (CCA 2d 1942) 128 F. 2d 979, 980; *Dunham* v. *Ottinger* (1926) 243 N. Y. 423, 438; *Matter of Greenleaf* (Gen. Sess. N. Y. Co. 1941) 176 Misc. 566, 569, determination confirmed 266 App. Div. 658, aff'd 291 N. Y. 690; *Matter of Herlands* (*Carchietta*) (Sup. Ct. Richmond Co. 1953) 204 Misc. 373].

Although, in the State courts, the appellant asserted that this rule did not apply to him because there existed a real and substantial danger that he might be prosecuted in the federal courts for violation of the Taft-Hartley Act [§302(a); 29 U. S. Code §186]—because of an alleged announced policy of cooperation in labor racketeering matters between the United States Attorney for the Southern District of New York and the appellee District Attorney (see Jurisd. Statement, p. 10)—he has apparently abandoned this aspect of his argument in favor of his main contention that the immunity granted by New York in the case at bar would never be sufficient to satisfy his privilege against self-incrimination.

Not only does the appellant assert that, in his case, the New York privilege against self-incrimination requires protection against possible federal prosecution, but he also claims that the Fifth Amendment is applicable (Jurisd. Statement, pp. 18-22). In support of the latter contention, the appellant finds that he has a "privilege and an immunity", enforceable under the Fourteenth Amendment,

not to testify "because the prosecuting arm of the federal government might be bestirred by the revelations made in the course of the inquisition" (*id.*, p. 20).

It is a sufficient answer to these contentions to note that this Court has held that the privilege against self-incrimination embodied in the Fifth Amendment is neither an element of due process nor a privilege or immunity of national citizenship [*Adamson* v. *California* (1947) 332 U. S. 46, 49-53; *Twining* v. *New Jersey* (1908) 211 U. S. 78, 97-99, 110]. Indeed, it would not violate the Constitution for a state to abolish the privilege entirely [see *Adamson* v. *California*, *supra*, 332 U. S. 52; *People* v. *Defore* (1926) 242 N. Y. 13, 28].

Turning to the scope of the privilege in New York, it is apparent that the allegation of possible incrimination in a foreign jurisdiction is insufficient, of itself, to bar the use of testimony in New York courts [*Woolson Spice Co.* v. *Columbia Trust Co.* (1st Dept. 1920) 193 App. Div. 346]. Nor are the New York immunity statutes invalid because they cannot protect against federal prosecution [*Dunham* v. *Ottinger*, *supra*, 243 N. Y. 436].

As this Court has observed (*Feldman* v. *United States*, *supra*, 322 U. S. at 493):

> "Whether testimony in a New York court should be compelled in exchange for immunity from prosecution under the penal laws of New York is for New York to say. For what purposes the United States may deem the disclosure of testimony more important than prosecution for federal crimes is for Congress to say. It has seen fit to make the exchange very sparingly * * * The immunity from prosecution, like the privilege against testifying which it supplants, pertains to a prosecution in the same jurisdiction."

This Court went on to say in the *Feldman* case, *supra* (322 U. S. at 493-494):

> "The cautionary words in *Jack* v. *Kansas* in nowise qualified the principle of that and later cases as to the separateness in the operation of state and federal criminal laws and state and federal immunity provisions."

Moreover, in the instant case, the appellant would not have been unprotected if he had testified in the grand jury. Under Section 952-t of the New York Criminal Code, the disclosure of grand jury testimony is prohibited except upon court order. This section, taken in conjunction with Section 2447 of the New York Penal Law and Article I, Section 6, of the New York Constitution, would appear to preclude the possibility that the appellant's grand jury testimony could be subsequently used as the basis for a federal prosecution under the Taft-Hartley Act [see, also, *United States* v. *DiCarlo* (D. C. N. D. Ohio 1952) 102 F. Supp. 604].

In this connection, it must be emphasized that Section 2447 of the New York Penal Law specifically provides that, in addition to granting a witness immunity from prosecution for any crime disclosed, incriminating testimony compelled shall not be received against him "upon *any* criminal proceeding."

Furthermore, as the Appellate Division pointed out in its opinion [2 A. D. (2d) 579, 585; see 426], if cooperation between the state and federal authorities were found to have existed, a federal court would forbid the use of the appellant's testimony in any federal prosecution (*Feldman* v. *United States*, *supra*, 322 U. S. 487, 494).

The immunity granted was clearly sufficient to protect the appellant, and, accordingly, no substantial federal issue exists for review.

B. Concerning the appellant's claim that federal legislation has pre-empted the field

As an alternative justification for his refusal to answer the grand jury questions, the appellant asserts that New York is powerless to enforce Section 380 of the Penal Law because it conflicts with, and is superseded by, Section 302 of the Taft-Hartley Act (29 U. S. Code §186). Consequently, he argues, the Court of General Sessions was without jurisdiction and could not require him to answer questions relative to possible violations of said Section 380.

Section 380 of the Penal Law, entitled "Bribery of Labor Representatives," as it existed at the time of the instant adjudication of contempt, provided, in part:

> "1. A person who gives or offers to give any money, property or other thing of value to any duly appointed representative of a labor organization with the intent to influence him in respect to any of his acts, decisions, or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, is guilty of a misdemeanor.
>
> "2. Any duly appointed representative of a labor organization who solicits or accepts or agrees to accept from any person any money, property or other thing of value upon any agreement or understanding, express or implied, that he shall be influenced in respect to any of his acts, decisions, or other duties as such representative, or upon any agreement or understanding, express or im-

plied, that he shall refrain from causing or shall prevent a strike or work stoppage or any form of injury to any business, is guilty of a misdemeanor."

Section 302 of the Taft-Hartley Act (29 U. S. Code §186) provides, in part:

"(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value."

Subdivision (c) exempts certain types of payments, not here relevant, while subdivision (d) makes a violation of the section a misdemeanor, and subdivision (e) empowers Federal District Courts to restrain violations thereof.

This section has been interpreted by this Court as outlawing all payments whatsoever, with the stated exceptions, between employer and representative [*United States* v. *Ryan* (1956) 350 U. S. 299, 305].

Of course, the mere fact that the same act is subject to both state and federal penalties, does not mean that the state law must, *ipso facto*, be deemed invalid [*California* v. *Zook* (1949) 336 U. S. 725, 731, and cases there cited]. Especially when the state enactment involves an exercise of its "usual police powers," courts should be hesitant, in the absence of an express manifestation of

congressional purpose, to find it displaced by federal legislation [*Kelly* v. *Washington* (1937) 302 U. S. 1, 10-11; *California* v. *Zook, supra,* 336 U. S. 734]. It cannot be doubted that the subject of bribery is one which has traditionally been regulated by the criminal laws of the states.

Congress never specifically manifested an intent to have Section 302 (a) of the Taft-Hartley Act provide the exclusive means of penalizing bribery of labor representatives of unions subject to the Act. Nor is this a case, such as sedition or control of aliens, where the federal interest is so overwhelming as, inferentially, to preclude any state regulation [*e.g., Pennsylvania* v. *Nelson* (1956) 350 U. S. 497; *Hines* v. *Davidowitz* (1941) 312 U. S. 52].

It is difficult to believe that Congress, in enacting the Taft Hartley Act, which increased the legal responsibility of unions [see *United Construction Workers* v. *Laburnum Construction Corp.* (1954) 347 U. S. 656, 666], intended to free union officials from accountability to the states for violations of their existing criminal laws, merely because such conduct was now also a violation of that Act. That such was never intended, can be seen from the Senate Report (No. 105, 80th Cong., 1st Sess. 50) preceding the adoption of the Act, and from a statement of Senator Taft, both quoted in the *Laburnum* case (347 U. S., at pp. 668-669). Referring to the possibility that a threat of violence, which would be a crime under state law, might also be an unfair labor practice, the Senator said:

> "There is no reason in the world why there should not be two remedies for an act of that kind." (93 Cong. Rec. 4024.)

The New York statute is not directed at the "methodology" or "motivation" of strikes (see Jurisd. Statement,

p. 15). Rather, its main purpose is to insure that labor representatives, in the performance of all their duties, remain faithful to their membership [see *People* v. *Cilento* (1956) 2 N. Y. (2d) 55, 62].

Although Congress may have had company domination of unions in mind in enacting parts of the Taft-Hartley Act (see Jurisd. Statement, pp. 11-12), there can be little doubt that the provisions here involved were at least partially aimed at labor racketeering. As one court stated:

> "An apparent purpose of Section 186(a), (b) and (d) • • • is to preserve the integrity of the labor-management relationship by prohibiting bribery, extortion or any form of dishonesty as between employer and employees."
>
> [*United States* v. *Brennan* (D. C. Minn. 1955) 134 F. Supp. 42, at p. 47; see also *William Dunbar Co.* v. *Painters & Glaziers Dist. Council* (D. C. D. C. 1955) 129 F. Supp. 417, 424].

It would seem, therefore, that the purposes of the New York and federal statutes are similar. Section 380 of the Penal Law, if anything, aids in the enforcement of these provisions of the Taft-Hartley Act [see *Gilbert* v. *Minnesota* (1920) 254 U. S. 325, 331].

The appellant fails to show any conflict of substance between the two statutes. Essentially, his entire argument on this point rests upon the premise that "coincidence means invalidity," the absurdity of which has been well illustrated by this Court (see *California* v. *Zook*, *supra*, 336 U. S. 732).

As in the case of extortion and robbery under the Federal Anti-Racketeering Act [18 U. S. Code §1951; see

United States v. *Local 807, etc.* (1942) 315 U. S. 521, 536], the subject of bribery of labor representatives is one open to concurrent regulation by the states. Consequently, Section 380 of the Penal Law is unaffected by Section 302 of the Taft-Hartley Act.

Finally, it should be noted that the grand jury was investigating, as well as bribery of labor representatives, the possible existence of the crimes of extortion and conspiracy (78); hence the Court of General Sessions had jurisdiction irrespective of the validity of Section 380.

Conclusion

The appellant's contentions are insubstantial and foreclosed by previous decisions of the Court. The appeal should therefore be dismissed, or in the alternative the judgment appealed from should be affirmed.

Respectfully submitted,

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